



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171602

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Marquette County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 17, 2016, at Montello, Wisconsin.

The issue for determination is whether the Department of Health Services correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], ES Spec.

Marquette County Department of Human Services
480 Underwood Avenue
PO Box 99
Montello, WI 53949-0099

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marquette County.
2. The petitioner's mother, [REDACTED] [REDACTED] (CG), was the head of a FS household in 2014-2015. Her mailing address at all times relevant to this case was [REDACTED], Wisconsin. The

petitioner moved out of the household when he graduated from school in June 2014, and did not return. Nonetheless, CG listed the petitioner as a member of her FS household in at least the months of July 2014 through June 2015. The petitioner did not have an open FS case of his own during those months.

3. CG's incorrect representation to the county agency that the petitioner was in her FS household from September 1, 2014 through June 2015, resulted in excess FS being issued to CG during that period.
4. In July 2015, the county agency issued a *FS Overpayment Notice* (claim # [REDACTED]) to CG. A copy of the *Notice* was also sent to the petitioner, at his mother's address. The agency determined that there had been an overpayment to CG's household of \$4,465 for the September through June period. The agency issued a *FS Repayment Agreement* to the mother (and the petitioner at the mother's address) on August 4, 2015, followed by several dunning letters (September 2, October 5, November 3, 2015). The *Repayment Agreement* and dunning letters did not reach the petitioner. Thus, the petitioner did not request a fair hearing to contest the property of the overpayment determination as it pertained to him, because he did not receive the relevant notices.
5. From June 2014 to the present, the petitioner has resided at [REDACTED], [REDACTED], Wisconsin.
6. On December 11, 2015, the Department issued a state tax refund interception notice to the petitioner. (The letterhead on the refund interception notice is that of the Department of Children and Families because the Department has a Memorandum of Understanding in place with DCF that allows it to issue tax refund interception notices on the Department's behalf). The notice advised that the Department intended to retain up to \$4,465 from the petitioner's state income tax refund to satisfy claim # [REDACTED].

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits: "...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....," Wis. Stat. § 49.125(1); see also 7 C.F.R. § 273.18(a) .

The Department may utilize tax refund interception as a means of recovering the overpayment. Wis. Stat. § 49.85. Section 49.85 provides that the Department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overissuance of Food Share benefits.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3). The Department has issued the required refund interception notice here.

I. JURISDICTION TO REVIEW THE MERITS OF THE UNDERLYING OVERPAYMENT DETERMINATION.

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department of health services may limit the scope of the hearing to exclude issues *that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.*

(emphasis added)

The petitioner has *not* had a prior opportunity for hearing on the merits of the overpayment. He did not file a hearing request to challenge that overpayment within the 90 day appeal period. However, his failure to so file is understandable, because he did not receive notification of the FS overpayment. Thus, the petitioner must be given an opportunity to argue the validity of the overpayment decision here. Similarly, his “late” tax interception appeal (30-day limit) must still be heard because he did not receive the tax interception notice, which was sent to his mother’s mailing address.

II. THE PETITIONER IS NOT LIABLE FOR THE FS OVERPAYMENT THAT OCCURRED FROM SEPTEMBER 2014 THROUGH JUNE 2015.

The petitioner’s mother represented to the county agency that the petitioner was in her FS household from at least September 1, 2014 through June 2015. He was not. Therefore, CG was overpaid FS for September 2014 through June 2015, because FS allotments increase by household size.

The agency seeks to recover the overpayment from either CG, the petitioner, or both. However, collection efforts against the petitioner are not appropriate. Collections efforts are to be made against adults who were *household members* at the time of the overpayment:

Sec. 273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid or...

...

(4) The following are responsible for paying a claim:

(i) *Each person who was an adult member of the household when the overpayment or trafficking occurred;*

(ii) A sponsor of an alien household member if the sponsor is at fault; or

(iii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(emphasis added)

7 C.F.R. §273.18(a)(1),(4).

The petitioner has established that he was not a member of his mother’s household at the time of the overpayment. Rather, he was living at the [REDACTED] address with his girlfriend during the period. To corroborate his hearing testimony regarding residence, the petitioner produced as witnesses his girlfriend, the girlfriend’s mother, and his grandmother (CG’s mother). All three witnesses corroborated the petitioner’s testimony that he moved out of his mother’s trailer home in June 2014 and has not returned. When asked if his mother was lying if she listed him as a household member during the overpayment period, the petitioner’s unwavering response was “yes.” The petitioner has established by a preponderance of the credible evidence that he was not living with his mother during the overpayment period.

If the petitioner was not residing with his mother, he could not be a member of her FS household. The federal definition of a FS household requires that a person be living with the other FS household members to be included in the household:

Sec. 273.1 Household concept.

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals *who live together* and customarily purchase food and prepare meals together for home consumption.

(b) *Special household requirements.--(1) Required household combinations.* The following *individuals who live with others* must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses; ...

(emphasis added)

7 C.F.R. §273.1(a),(b).

See also *FS Wisconsin Handbook (FSWH)* at §§7.3.1.2 and 3.3.1.1 (“food unit”), online at <http://emhandbooks.wi.gov/fsh/>. The determination by the county agency that the petitioner was overpaid is reversed.

CONCLUSIONS OF LAW

1. Jurisdiction is present to consider the merits of the underlying overpayment determination against the petitioner, as he did not receive the July 2015 FS *Overpayment Notice* for claim # [REDACTED]
2. The petitioner was not a member of his mother’s FS household from July 2014 through the present.
3. The petitioner is not liable for any portion of the FS claim established against CG for 2014-2015.
4. Certification for tax refund interception against the petitioner for claim # [REDACTED] was incorrect, and must be reversed. This conclusion has no effect on the Department’s decision that his mother was overpaid, or any collection efforts that the Department may be making against his mother.

NOW, THEREFORE, it is

ORDERED

That the petition is remanded to the Department/PACU with instructions to remove the petitioner as a liable person on claim # [REDACTED] and to cease collection efforts against him for that claim, within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

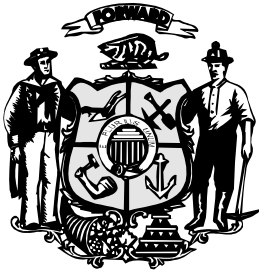
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of February, 2016

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 18, 2016.

Marquette County Department of Human Services
Public Assistance Collection Unit